

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MIGUEL ANAYA,

Defendant.

CRIM. NO. 99-81037-02

PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

ORDER DENYING MOTION FOR RESENTENCING

On March 16, 2010, Defendant Miguel Anaya was sentenced by this Court.

On March 19, 2010, Defendant Anaya filed a timely motion of appeal of his conviction and sentence to the United States Court of Appeals for the Sixth Circuit.

On March 23, 2010, Defendant Anaya filed a motion for resentencing in this United States District Court.

In *United States v. Garcia-Robles*, 562 F.3d 763, 767-68 (6th Cir. 2009), the Sixth Circuit held that when a defendant files a notice of appeal, that action divests the district court of jurisdiction, noting *Dunham v. United States*, 486 F.3d 931, 935 (6th Cir. 2007) (“The traditional rule is that ‘ a timely appeal divests the district court of jurisdiction to reconsider its judgment until the case is remanded by the Court of Appeals.’ ((quoting *Pitlock v. Otis Elevator*, 8 F.3d 325, 327 (6th Cir. 1993))).”

Given that Defendant has filed a timely notice of appeal prior to the instant Motion, the Court is without jurisdiction to consider this motion, and therefore denies Defendant Anaya's Motion for Resentencing.

SO ORDERED.

S/Paul D. Borman
PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: May 3, 2010

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on May 3, 2010.

S/Denise Goodine
Case Manager